



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 21, 1995

Mr. Boyd Kennedy  
Staff Attorney  
Law Enforcement Division  
Texas Parks and Wildlife Department  
4200 Smith School Road  
Austin, Texas 78744

OR95-1585

Dear Mr. Kennedy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37199.

The Texas Parks and Wildlife Department (the "department") received a request for information concerning a fish kill which occurred in the Gulf of Mexico on September 5, 1994. You contend that the requested information is excepted from required public disclosure under section 552.103 of the Government Code.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance you have made the requisite showing that the requested information relates to relates to reasonably anticipated litigation for purposes of section 552.103(a).

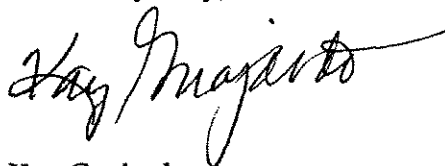
However, absent special circumstances, once information has been obtained by all parties to the litigation, for example, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a): for example, if the Coastal Fisheries Presentation outline document was created by Zapata-Haynie Co. for the pre-fishing orientation meetings of April 10-14, 1995, then this information is not excepted under section 552.103, or if a copy of the notes for the Menhaden Fishery Meeting held in Austin, November 9, 1994, had been previously provided to Zapata Protein, Inc., or Zapata-Haynie Co., this information is not excepted from required public disclosure.

Furthermore, we note that the documents submitted for our review contain two offense reports. Both subjects of the offense reports were convicted and paid fines. Section 552.103 may not be invoked to except front page offense report information, even where it is relevant to pending litigation, if the information has already been made available to the defendant in criminal litigation. Open Records Decision No. 597 (1991). *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), sets out the type of information that is considered "front page offense report information" and deemed public. See Open Records Decision No. 127 (1976) at 3-4 (listing factual information available to public).

Finally, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/LBC/rho

Ref: ID# 37199

Enclosures: Submitted documents

cc: Mr. James Mann  
Clark, Thomas & Winters  
P.O. Box 1148  
Austin, Texas 78767  
(w/o enclosures)